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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/618,213

07/11/2003

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10/27/2006

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EXAMINER

PEUGH, BRIAN R

ART UNIT

PAPER NUMBER

2187

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,213

Applicant(s)

CHILDS ET AL.

Examiner

Brian R. Peugh

Art Unit

2187

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicant's arguments, see Appeal Brief, filed August 2, 2006, with respect to the rejection(s) of claim(s) 1-7 under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art (AAPA) in view of James (US# 2003/0212862) have been fully considered and are persuasive. Therefore, the finality of that action has been withdrawn and prosecution is REOPENED. However, upon further consideration, a new ground(s) of rejection is made in view of Symantec Corporation, noted below.

Please note the change in Examiner attributed to the current Application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Symantec Corporation (Norton Ghost User's Guide), hereafter referred to as Symantec.

Regarding claim 1, Symantec teaches a backup system for a computer having a hard drive [pages 9-10] comprising: a program appliance comprising a program

attachable in data communication with the computer[boot floppy for floppy drive; pages 11 and 16-17] and a data storage appliance attachable in data communication with the computer [e.g., CD-ROM, pages 19, 10], wherein the program is configured to copy the files from the hard drive to the data storage appliance without installation of the program on the hard drive [the ghost executable is not installed/copied onto any hard drive or partition; the ghost executable is only stored in the boot partition of the boot device (ghost executable found on boot floppy); pages 11, 126, and 26-30

Regarding claim 2, Symantec teaches wherein the program appliance and the data storage appliance are the same appliance [Consider a computer with two hard drives, the first containing the data to be backed up, while the second contains two partitions where the first partition comprises the ghost executable (page 11) and the second partition is empty. The second hard drive is interpreted as both the program appliance and data storage appliance. The executable is executed from the first partition of the second drive, the source is selected to be the first hard drive, and the destination location for the backup files is selected to be that of the second partition of the second drive [page 28-20]. Thus, Symantec teaches the claim limitations as recited. Neither appliance is claimed to be prohibited from being located with the computer. Also, one of ordinary skill in the art would recognize that the second hard drive could be located in an external enclosure connected to the computer via a USB network, and that the ghost executable could be booted from the external hard drive].

Regarding claim 3, Symantec teaches wherein the program is further configured to execute automatically upon the program appliance being attached to the computer [in accordance with user selection of the Applicant (para 0033), the ghost executable executes automatically after the computer has been set to boot from the floppy; page 26].

Regarding claim 4, Symantec teaches wherein the program is further configured to copy the files from the data storage appliance to the hard drive without installation of the program on the hard drive [pages 31-32; as noted above, the image file may be stored on a CD-R/RW in the CD-ROM; pages 36 & 39].

Regarding claim 5, Symantec teaches a network [page 100] in data communication with the computer [page 42]; and a server computer [master] in data communication with the network, wherein the data communication between the data storage appliance and the computer is provided through the server [page 34, "peer-to-peer", page 42, page 99-101].

Regarding claim 6, Symantec teaches wherein the program is further configured to copy the files from the data storage appliance to the hard drive without installation of the program on the hard drive [pages 31-32; as noted above, the image file may be stored on a CD-R/RW in the CD-ROM; pages 36 & 39].

Regarding claim 7, Symantec teaches wherein the program is further configured to execute automatically upon the program appliance being attached to the computer [in accordance with user selection of the Applicant (para 0033), the ghost executable executes automatically after the computer has been set to boot from the floppy; page 26].

Response to Arguments

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

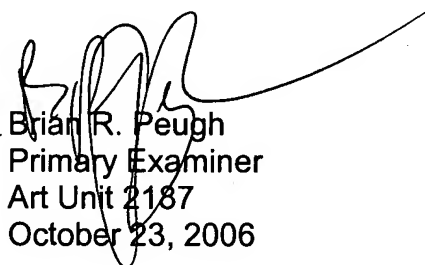
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Peugh whose telephone number is (571) 272-4199. The examiner can normally be reached on Monday-Thursday from 7:00am to 4:30pm. The examiner can also be reached on alternate Friday's from 7:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks, can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian R. Peugh
Primary Examiner
Art Unit 2187
October 23, 2006